BEFORE THE
DEPARTMENT OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: STACY S., Claimant, vs. INLAND REGIONAL CENTER Service Agency.	OAH CASE NO. 2006040698

DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 1, 2006, in San Bernardino, California.

Claimant's father, Richard S., represented claimant, who was present at the fair hearing.

Vince Toms, Consumer Services Representative, Appeals Unit, Inland Regional Center, represented the Inland Regional Center (the IRC or Service Agency).

The matter was submitted on June 1, 2006.

ISSUE

Should the Service Agency, under the particular circumstances of this case, retroactively fund co-payments made by claimant's parents to their private health insurer in connection with necessary physical and occupational therapy provided to claimant pursuant to the California Early Intervention Services Act?

FACTUAL FINDINGS

1. Claimant Stacy S. was born on February 10, 2002. At all times material herein,[1] Stacy was an "infant or toddler" under the age of three years with a developmental delay, with respect to whom a need for early intervention services was documented within the meaning of Government Code section 95014. Early intervention services were provided through the Inland Regional Center (IRC), the family's service agency.

2. The Early Start Program is California's response to federal legislation to provide early intervention services in a coordinated, family-centered manner to "infants and toddlers" (i.e., children under the age of three) who are at risk for developmental delays or who already have such delays. Research has shown that early intervention during the first three years of a child's life can make a profound difference in a child's future. An individualized family services plan (IFSP) is developed for meeting the unique needs of the child and her family. Quarterly developmental assessments are provided in the parents' home free of charge. Exercises, games, and other activities in all areas of development are provided to stimulate the child to develop to his or her full potential. Specific services, which are based on the individual need of the child, include physical and/or occupational therapy, respite care, assistive technology, case management, and home care. By working closely with parents, the regional center can help address parental concerns, identify needs and resources to address those needs, identify necessary early intervention services, and set an appropriate course of action.

A service coordinator or, to use the IRC term, an infant services coordinator, is assigned to the family. The infant services coordinator is responsible for assisting the family in accessing information and gaining knowledge, making decisions and choices about desired outcomes, developing plans for working toward those outcomes, and identifying, locating and accessing services that may be needed to achieve those outcomes.

3. In January 2003, Stacy was referred to IRC's Early Start Program, and remained in that program until her third birthday, in February 2005. Stacy had already begun receiving physical therapy from Casa Colina Hospital prior to her referral to IRC. As of January 2003, Stacy was on the waiting list to commence occupational therapy at Casa Colina; she began such therapy in March 2003.

4. Throughout the period that Stacy was involved in IRC's Early Start Program, the family's infant services coordinator was Jana Anderson.

As of the date of the administrative hearing, Anderson was the assistant program manager for IRC's Early Start Program, a position she had held for the preceding eight months. For the six years prior to that time, Anderson served as an IRC infant services coordinator. For the 11 years before that, she was a regional center counselor. Anderson is also a registered nurse and has a master's degree in nursing. She is a certified pediatric nurse

[1] The co-payments at issue are for a period of time ending in February 2005, when Stacy turned three.

practitioner, has been trained in a variety of developmental tools, and has herself given training to others.

5. In January 2003, Anderson wrote a letter to Stacy's family, in which she introduced herself as Stacy's infant services coordinator. Enclosed with the letter were an Early Start Brochure, a business card, and several forms, including a parental rights and responsibilities form and an authorization to obtain and release information form.

6. Also in January 2003, Anderson visited Stacy's family at their home. During her visit, Anderson handed Stacy's parents a packet of materials. One of the documents in the packet was a private insurance advisory.[2] Among other matters, the advisory provided as follows:

> "[E]arly intervention services shall be provided to all Part C eligible infants and toddlers at no cost to families. Regional centers may not require a family to apply to their private insurance for early intervention services nor may regional centers delay the provision of those services until the family receives authorization or denial from their private insurer. . . .
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> USE OF PRIVATE INSURANCE
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> Regional centers may use a family's private insurance as a service resource . . . for early intervention services identified on the IFSP; however, informed consent must be obtained from families prior to application to a private insurer. If there is no realistic threat that families will incur a financial cost or loss, regional centers may seek reimbursement from the private insurer with the family's informed consent.
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> Financial costs or losses by a family include, but are not limited to . . . an out of pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim.
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> Regional centers may pay the cost of accessing private insurance (e.g., deductible or co-pay amounts) for early intervention services identified on the IFSP.
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> Regional centers may not require families, if they would incur financial cost, to use private insurance proceeds to pay for the services that must be provided to an eligible infant or toddler. Families must be notified that use of the private insurance is voluntary, even where there is no cost to the family."

[2] Anderson testified that she provided a copy of the advisory to Stacy's parents on five subsequent occasions as well. However, documentation presented at the hearing reflected that Stacy's parents received the advisory on just two occasions, the initial visit (January 2003) and the first annual review (January 2004). Stacy's father, Richard S., testified that he was given a copy of the advisory only at the initial visit. The existing documentation would seem to be more reliable than the memories of either Anderson or Richard S. Accordingly, it is found that the advisory was provided to Stacy's parents on two occasions, in January 2003 and January 2004.

The advisory does not specify any particular time frame within which a family is to seek reimbursement for any co-payments.

Richard testified that during the initial visit, Anderson inquired of Stacy's parents as to what services Stacy was already receiving. Richard replied that Stacy was receiving physical therapy. When Anderson asked who was funding this therapy, Richard stated that it was being funded through the family's private health insurance provider. Anderson did not say anything else relating to the family's insurance. Neither at the initial meeting nor at any other time did Anderson advise Stacy's parents that IRC could reimburse them for their insurance co-payments.

Anderson testified that she did not specifically recall whether she had said anything to Stacy's parents, either at her initial visit or subsequently, concerning IRC's reimbursement of private insurance co-payments. She did, however, testify concerning her standard practice as an infant services coordinator when a new family was assigned to her. In this regard, Anderson stated that she would first send a letter to the family introducing herself. Enclosed with the letter would be certain documents, including forms to be filled out by the family. She would then visit the family in their home, bringing with her additional copies of the materials she had mailed to them with her introductory letter. During the visit, Anderson would explain the program, go over parental rights, discuss the private insurance advisory, discuss the individualized family services plan, and secure the parents' permission to conduct an assessment. With regard to the insurance advisory, Anderson would inform families of IRC's policy of funding private insurance co-payments. Anderson would ask various questions of the parents relating to medical, developmental and other background issues and would inquire as to any parental concerns. At the end of the assessment, Anderson would compile a developmental "levels page," in which objectives or goals for the child would be articulated in each area of developmental delay. These matters would be shared with the parents, who would be asked whether or not they were in agreement. If so, parents would sign the appropriate documents. Anderson would explain to the parents that the IFSP would be the "foundation" for future visits and actions.

At the end of the visit, Anderson would initiate the provision of appropriate services and would inquire into the family's eligibility for alternate funding sources. Anderson would also suggest developmental activities in which the family could engage and would advise the family concerning additional potential resources. She would also give the family a "Family Resource Notebook," into which the family could insert and organize materials as they were acquired over time. Anderson specifically recalled giving such a notebook to Stacy's parents during the initial visit.

Anderson testified that she considered herself to be an advocate for the family, in which role she would assist the family in identifying and obtaining appropriate services for their child.

7. By approximately April 2003, Anderson became aware that Stacy was receiving physical and occupational therapy specifically from Casa Colina Hospital. Casa Colina is an IRC contract vendor. Anderson testified that she did not recall whether or not

she suggested to the family that since Casa Colina was an IRC vendor, IRC could pay the vendor directly, without involving the family's private insurance and thus avoiding the need for the family to make any co-payments.

8. Based on the evidence described above in Factual Findings 6 and 7, it is found that Anderson never specifically advised Stacy's parents that IRC would, at their request, reimburse the family for their private insurance co-payments. It is also found that Anderson never advised the family that since Casa Colina was an IRC vendor, IRC could arrange for the provision of physical and occupational therapy directly through Casa Colina, without Stacy's family having to utilize their private insurance for this purpose. These findings are made because Anderson's recall was insufficient to counter Richard's testimony that she had never discussed co-payment reimbursement with the family. Though Anderson's general practice is relevant, it is not entitled to as much weight as is Richard's testimony as to what actually occurred. Further, if Anderson had told Stacy's parents that IRC could pay its vendor Casa Colina directly, so that the couple did not have to utilize their insurance, it seems a near certainty that the family would have accepted IRC's offer in this regard, instead of continuing to utilize and make payments to its insurer for two more years.

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9. From January 2003 to February 2005, Stacy's parents made co-payments to their health insurer in the approximate total amount of $3,132.53, in connection with physical and occupational therapy provided to Stacy during this period by Casa Colina. From January 2003 to January 2006, the family's insurance company has itself been billed over $71,000 in connection with such physical and occupational therapy.

10. Physical and occupational therapy are among the services that may be provided to children under the Early Start Program. Stacy's IFSP prescribed both physical and occupational therapy as among the early intervention services to be provided to her, and more specifically that they be provided through Casa Colina. The parties agree, and it is found, that the physical and occupational therapy services provided to Stacy during the relevant time period were appropriate and necessary. [3] The parties also agree, and it is further found, that if Stacy's family had requested reimbursement in advance for their insurance co-payments, IRC would have granted their request.

11. Janet Goehring, IRC's Chief of Administrative Services, testified at the hearing concerning certain Department of Developmental Services (DDS) budgetary procedures relating to IRC and the other regional centers. She stated that IRC receives a small portion of its annual budget at the outset of each fiscal year, which begins July 1. It receives the remainder of its annual budget on an on-going basis throughout the fiscal year, as IRC submits claims (i.e. bills that it has paid out) and receives reimbursement with respect to those claims. IRC generally submits and is reimbursed during the fiscal year in which a particular claim arises. However, the regional centers are also permitted to submit claims

[3] IRC asserts that while physical and occupational therapy are "required services," the funding of co-payments made to private insurance carriers are "non-required" services. However, as discussed below, the funding of co-payments does not constitute a service at all; it is simply a mechanism by which necessary services are funded.

relating to costs incurred in either of the two preceding fiscal years. The current fiscal year and the two fiscal years immediately preceding it are called "open fiscal years." In contrast, IRC is not permitted to request payment pursuant to this usual process with regard to claims incurred in "closed" fiscal years, i.e., fiscal years older than the two years immediately preceding the current year. It is still possible, however, for regional centers to receive reimbursement from DDS for payments it makes with regard to a closed fiscal year. This can happen in one of two ways. First, if, as occurs from time to time, the center receives funds allocable to a closed fiscal year (e.g., a late payment from a third party), it may use these funds to offset any outstanding closed-year claims. Second, and in the alternative, the regional center may file a claim with the State Victim Compensation and Government Claims Board, a more burdensome process which, if successful, will require that the bill be paid out of the regional center's current fiscal year funds.

Goehring also testified that in order for DDS to process a claim for fiscal year 2003-2004, the claim would have to have been submitted by May 31, 2006. Accordingly, as of the date of the administrative hearing in this matter and according to Goehring, the only open fiscal years, for claim-reimbursement purposes, were years 2004-2005 and the current year, 2005-2006. Reimbursement of Stacy's parents in connection with co-payments made prior to July 1, 2004, would have to be funded either through an offset of late, closed-year payments (if any), or through the filing of a Victim Claims Board claim.

The testimony of Goehring as described above in this Factual Finding was credible, stands uncontroverted in the record, and is thus credited. It is therefore found that there is no fiscal or funding obstacle that legally prohibits IRC from reimbursing Stacy's parents for any physical or occupational co-payments they made from January 2003 to February 2005. As to the period from July 2004 to February 2005, IRC could simply submit the reimbursements as claims pertaining to an open fiscal year. As to the period from January 2003 to June 2004, IRC could either offset the amounts reimbursed by late payments received in connection with closed fiscal years, or it could file a Claims Board claim, in which case it would have to fund (and absorb) the payments from its present fiscal year (2005-2006) budget.

12. In September 2005, IRC's Shawna Timmons became the family's consumer services coordinator. Timmons advised claimant's parents that it was the practive of IRC to reimburse parents for their private insurance co-payments relating to a service covered in the client's service plan. The family learned this same information at about the same time from the parent of another developmentally disabled child. Shortly thereafter, claimant's parents requested that IRC reimburse them for their PT and OT co-payments.

13. In a March 21, 2006, letter to claimant's mother, Michelle S., IRC advised that it had denied claimant's request for reimbursement, pursuant to California Code of Regulations, title 17, section 50612, subdivision (b), on the basis that the services in question had not been preauthorized and could not be retroactively authorized.

14. On April 14, 2006, Richard S. requested a fair hearing.

LEGAL CONCLUSIONS

Statutory, Regulatory, and Judicial Authority

1. The California Early Intervention Services Act is codified at Government Code section 95000 et seq. Section 95001[4] provides in pertinent part as follows:

"(a) The Legislature hereby finds and declares all of the following:

(1) There is a need to provide appropriate early intervention services individually designed for infants and toddlers from birth through two years of age, who have disabilities or are at risk of having disabilities, to enhance their development and to minimize the potential for developmental delays.

(2) Early intervention services for infants and toddlers with disabilities or at risk represent an investment of resources, in that these services reduce the ultimate costs to our society, by minimizing the need for special education and related services in later school years and by minimizing the likelihood of institutionalization. These services also maximize the ability of families to better provide for the special needs of their child. Early intervention services for infants and toddlers with disabilities maximize the potential to be effective in the context of daily life and activities, including the potential to live independently, and exercise the full rights of citizenship. The earlier intervention is started, the greater is the ultimate cost-effectiveness and the higher is the educational attainment and quality of life achieved by children with disabilities.

* * *

(b) Therefore, it is the intent of the Legislature that: . . . (3) Families be well informed, supported, and respected as capable and collaborative decisionmakers regarding services for their child."

2. Government Code section 95014 provides in pertinent part as follows:

"(a) The term 'eligible infant or toddler' for the purposes of this title means infants and toddlers from birth through two years of age, for whom a need for early intervention services, as specified in the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1471 et seq.) and applicable regulations, is documented by means of assessment and evaluation as required in Sections 95016 and 95018 and who meet one of the following criteria:

(1) Infants and toddlers with a developmental delay in one or more of the following five areas: cognitive development; physical and motor development, including vision and hearing; communication development; social or emotional

[4] All statutory references are the Government Code, unless otherwise noted.

development; or adaptive development. Developmentally delayed infants and toddlers are those who are determined to have a significant difference between the expected level of development for their age and their current level of functioning. This determination shall be made by qualified personnel who are recognized by, or part of, a multidisciplinary team, including the parents.

(2) Infants and toddlers with established risk conditions, who are infants and toddlers with conditions of known etiology or conditions with established harmful developmental consequences. The conditions shall be diagnosed by a qualified personnel recognized by, or part of, a multidisciplinary team, including the parents. The condition shall be certified as having a high probability of leading to developmental delay if the delay is not evident at the time of diagnosis.

(3) Infants and toddlers who are at high risk of having substantial developmental disability due to a combination of biomedical risk factors, the presence of which is diagnosed by qualified clinicians recognized by, or part of, a multidisciplinary team, including the parents.

(b) Regional centers and local education agencies shall be responsible for ensuring that eligible infants and toddlers are served as follows:

(1) The State Department of Developmental Services and regional centers shall be responsible for the provision of appropriate early intervention services in accordance with Part H of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1471 et seq.) for all infants eligible under Section 95014, except for those infants with solely a visual, hearing, or severe orthopedic impairment, or any combination thereof, who meet the criteria in Sections 56026 and 56026.5 of the Education Code, and in subdivisions (a), (b), (d), or (e) of Section 3030 of, and Section 3031 of, Title 5 of the California Code of Regulations."

3. Government Code section 95016 provides in pertinent part as follows:

"(a) Each infant or toddler referred for evaluation for early intervention services shall have a timely, comprehensive, multidisciplinary evaluation of his or her needs and level of functioning in order to determine eligibility. In the process of determining eligibility of an infant or toddler, an assessment shall be conducted by qualified personnel, and shall include a family interview, to identify the child's unique strengths and needs and the services appropriate to meet those needs; and the resources, priorities and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler. Evaluations and assessments shall be shared and utilized between the regional center and the local education agency, and any other agency providing services for the eligible infant or toddler, as appropriate. Family assessments shall be family directed and voluntary on the part of the family. Families shall be afforded the opportunity to participate in all decisions regarding eligibility and services."

4. Government Code section 95018 provides in pertinent part as follows:

"Each eligible infant or toddler and family shall be provided a service coordinator who will be responsible for facilitating the implementation of the individualized family service plan and for coordinating with other agencies and persons providing services to the family. . . ."

5. Government Code section 95020 provides in pertinent part as follows:

"(a) Each eligible infant or toddler shall have an individualized family service plan. The individualized family service plan shall be used in place of an individualized program plan required pursuant to Sections 4646 and 4646.5 of the Welfare and Institutions Code, the individual education plan required pursuant to Section 56340 of the Education Code, or any other applicable service plan."

6. California Code of Regulations, title 17, section 50612 provides in pertinent part as follows:

"(a) A purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds.

(b) The authorization shall be in advance of the provision of service, except as follows:

(1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendored service provider:

(A) At a time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays);

(B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of service; and

(C) Where the regional center determines that the service was necessary and appropriate."

7. California Code of Regulations, title 17, section 52020 provides as follows:

"An infant or toddler shall be eligible for early intervention services if he or she is between birth up to thirty-six months of age and meets one of the criteria specified in Section 52022 as determined by means of evaluation pursuant to Section 52082 of these regulations and needs early intervention services."

8. California Code of Regulations, title 17, section 52106 provides in pertinent part as follows:

"(b) The IFSP shall include the following:

(1) With the agreement of the parent, a statement of the family's resources, priorities, and concerns related to enhancing the development of the infant or toddler;

(2) A statement, based on evaluation and assessment information, of the infant's or toddler's present levels of:

(A) Physical development including fine and gross motor development, vision, hearing, and health status;

(B) Cognitive development;

(C) Communication development;

(D) Social or emotional development; and,

(E) Adaptive development;

(3) The statement of present levels of development required in subsection (b)(2) of this section shall be based on evidence that can be measured or observed by a qualified professional;

(4) A statement of the developmental outcomes expected for the infant or toddler and the criteria, procedures, and time lines used to determine the degree to which progress toward achieving outcomes is being made. Such outcomes shall be based on the identified needs of the infant or toddler and family pursuant to assessment;

(5) A statement about the outcomes for the family when services for the family are related to meeting the special developmental needs of the infant or toddler;

(6) Statements of the specific early intervention services necessary to meet the unique needs of the infant or toddler and the family to achieve the outcomes including:

(A) The frequency, intensity, and method of delivering the services;

(B) The location where the services will be delivered;

1. The statements of location shall specify the natural environments such as home, child care, school program, or private program where early intervention services shall be provided; and

2. The statement shall include a justification of the extent, if any, to which the services will not be provided in a natural environment.

(C) The projected date for initiation of each service;

(D) The anticipated duration of the services;

(E) The scheduled days when services/programs will not be available when the service provider operates a program which has a fixed schedule which includes breaks in service for periods such as holidays or vacations; and

(F) The name of the regional center, LEA or service provider providing each early intervention service;

(7) The funding source for other or non-required services provided by any entity other than regional centers or LEAs including the procedures that will be followed to obtain such funding;

(8) The name of the service coordinator; and,

(9) A statement of the transition steps, which are initiated when the toddler is two years nine months, or at the discretion of all parties, up to six months before the toddler turns three years old, that are necessary to ensure the transition of the toddler to:

(A) Preschool services under Part B of the Individuals with Disabilities Education Act, Title 20 United States Code Sections 1400-1420, if the toddler with a disability is eligible; or

(B) Other public and private services that may be needed by the toddler pursuant to Section 52112 of these regulations.

(c) Regional centers and LEAs shall not place an infant or toddler on a waiting list for early intervention services required by the IFSP.

(d) Regional centers and LEAs shall arrange, provide or purchase early intervention services required by the IFSP as soon as possible."

9. California Code of Regulations, title 17, section 52108 provides as follows:

"(a) Each service on the IFSP shall be designated as one of the following:

(1) A required early intervention service. These services shall be provided, purchased or arranged by a regional center or LEA; or

(2) Other public programs providing services that may benefit the infant, toddler and/or family which the eligible infant or toddler or his or her family may be eligible to receive, subject to the statutory, regulatory and other program criteria of those programs or agencies. These services may include but not be limited to: residential care; family reunification services, Head Start, Supplemental Security Income; Supplemental Security Programs; Temporary Assistance to Needy Families and food stamps; Medi-Cal; or

(3) A referral to a community service that may be provided to an eligible infant or toddler or his or her family but is not required under the California Early Intervention Services Act, Government Code Sections 95000-95030.

(A) A non required service includes but is not limited to: employment; child care; housing; medical services such as surgery, or medication, hospitalization, medical devices necessary to control or treat a medical condition, or immunizations, well-baby care, income support, family or marital counseling unrelated to the infant or toddler's development, and substance abuse counseling.

(B) The IFSP shall, to the extent appropriate, include the steps and time lines for the service coordinator to assist the parent to secure those services through public or private sources.

(b) The receipt of required early intervention services listed on the IFSP, pursuant to Section 52108(a)(1) of these regulations, from other state or federal agencies such as California Children Services, is dependent on the infant or toddler and the infant's or toddler's parent meeting the statutory, regulatory, and other program criteria of the agency and/or program that provides those services. These criteria may include financial eligibility and medical condition eligibility as diagnosed by program certified personnel, and on the availability of funding for the program.

(1) In the event that the infant or toddler or infant's or toddler's parent is not eligible to receive those agency services, or funding for the program is unavailable, the required early intervention services shall be provided by the regional center or the LEA.

(2) The parent shall be informed in writing of this provision during the initial 45 day evaluation and assessment period and/or during the IFSP meeting."

10. California Code of Regulations, title 17, section 52109 provides in pertinent part as follows:

"(a) Regional centers shall provide, arrange, or purchase early intervention services, as required by the infant's or toddler's IFSP, and be payor of last resort for

infants and toddlers determined eligible for early intervention services as:

(1) Developmentally delayed pursuant to 52022(a);

(2) Established risk pursuant to 52022(b)(1); or

(3) High risk for developmental disability pursuant to 52022(c).

* * *

(c) The use of the family's private insurance to pay for evaluation, assessment, and required early intervention services specified on the infant or toddler's IFSP, shall be voluntary.

For purposes of this subsection, voluntary means there is documentation in the child's record that parents have been informed of their right to receive evaluation, assessment and required early intervention services at no cost to the family and that the use of private insurance is voluntary."

11. California Code of Regulations, title 17, section 52000 provides in pertinent part as follows:

"(b) The following definitions shall apply to the words used in this subchapter: . . .

(12) Early intervention services means those services designed to meet the developmental needs of each eligible infant or toddler and the needs of the family related to the infant's or toddler's development. The services include but are not limited to assistive technology; audiology; family training; counseling and home visits; health services; medical services only for diagnostic or evaluation purposes; nursing services; nutrition services, occupational therapy; physical therapy; psychological services; service coordination; social work services; special instruction; speech and language services; transportation and related costs; and vision services. Early intervention services may include such services as respite and other family support services."

12. California Code of Regulations, title 17, section 52120 provides in pertinent part as follows:

"(a) Regional centers or LEAs shall assign a service coordinator under the following circumstances:

(1) At the time that infants or toddlers are referred for evaluation and assessment; and,

(2) When infants or toddlers are determined eligible for early intervention services from regional centers and/or LEAs."

13. California Code of Regulations, title 17, section 52121 provides in pertinent part as follows:

"(a) The service coordinator shall: . . .

(4) Inform the parent of the availability of additional non-required services as specified in Section 52108(a)(3)(A) of these regulations which may provide assistance to the family. . . ."

14. Code of Federal Regulations, title 34, section 303.12, provides in pertinent part as follows:

"(a) General. As used in this part, early intervention services means services that --

(1) Are designed to meet the developmental needs of each child eligible under this part and the needs of the family related to enhancing the child's development;

(2) Are selected in collaboration with the parents;

(3) Are provided --

(i) Under public supervision;

(ii) By qualified personnel, as defined in § 303.21, including the types of personnel listed in paragraph (e) of this section;

(iii) In conformity with an individualized family service plan; and

(iv) At no cost, unless, subject to § 303.520(b)(3), Federal or State law provides for a system of payments by families, including a schedule of sliding fees; and

(4) Meet the standards of the State, including the requirements of this part."

Analysis

15. The foregoing authority may be summarized in the context of the present proceeding as follows:

a. The Legislature has determined that there is a need to provide appropriate early intervention services individually designed for children under the age of three years, who have or are at risk of having disabilities, to enhance their development and to minimize the potential for developmental delays. (Gov. Code §§ 95001, subd. (a)(1) and 95014, subd. (a); Cal. Code Regs., tit. 17, § 52020, subd. (a).)

b. Regional centers, among other agencies, are responsible for ensuring that eligible child is provided all early intervention services that are appropriate to meet the child's developmental needs. Early intervention services include physical and occupational therapy. Early intervention services are to be provided at no cost to the family, and use of the family's private insurance to pay for required early intervention services specified on the child's IFSP shall be voluntary. (Gov. Code §§ 95014, subd. (b) and 95016, subd. (a); Cal. Code Regs., tit. 17, §§ 52000, subd. (b)(12) and 52019, subds. (a) and (c); Code Fed. Regs., tit 34, § 303.12(a)(3)(iv).)[5]

c. Each eligible child shall have an individualized family service plan (IFSP), which will identify all required early intervention services necessary to meet the unique needs of the child. Each child shall be provided a service coordinator who will be responsible for facilitating the implementation of the IFSP and for coordinating with other agencies and persons providing services to the family. The service coordinator will also be responsible to inform the child's parents of the availability of additional non-required services which may provide assistance to the family. (Gov. Code §§ 95018 and 95020, subd. (a); Cal. Code of Regs., tit. 17, §§ 52106, subd. (b)(6), 52108, subd. (a)(1), 52120, subd. (a)(1) and (2), and 52121, subd. (a)(4).)

d. A purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds. The authorization shall be in advance of the provision of service, except with regard to emergency services. The emergency services exception requires *both* that services are rendered at a time when authorized regional center personnel cannot be reached *and* that the service was necessary and appropriate. (Cal. Code Regs., tit. 17, § 50612, subds. (a) and (b).) "Services" are, however, to be distinguished from a "funding source" or "purchase" of the services. (Cal Code of Regs., tit. 17, §§ 52000, subd. (b)(12), 52106, subds. (b)(6) and (7) and (d), 52108, subd. (a)(1).) Accordingly, the requirement that services be authorized in advance does not apply to the method of payment or the funding source for such services.

16. It is undisputed and has been found above that Stacy was at all relevant times eligible for early intervention services, that both physical and occupational therapy were among those services appropriate to meet her developmental needs, that both of those services were explicated identified as required services on Stacy's IFSP, and that had Stacy's parents sought reimbursement of their insurance co-payments in advance, IRC would have approved and provided such reimbursement. Accordingly, the services themselves (i.e.,

[5] With regard to the requirement that early intervention serviced be provided at no cost to the child's parents, also see the California Department of Developmental Services Community Services Division Early Start Program Advisory, PCSB 99-5, re the use of private insurance.

physical and occupational therapy) were authorized in advance. The method of payment or funding of such services need *not* have been authorized in advance. That being the case, and for the additional reason that all early intervention services must be provided to the family at no cost, IRC cannot deny reimbursement to Stacy's family on the ground that Stacy's parents did not request it in advance.

17. There is, moreover, an additional reason why IRC cannot deny reimbursement in the present case. As found above, Anderson did not orally advise Stacy's parents that they could seek reimbursement or that IRC would reimburse them for their private insurance co-payments. While the insurance advisory does state that an eligible child's parents may not be required to pay for services even to the extent of an insurance deductible or co-payment, in the overall context of this case, the advisory did not constitute reasonable or sufficient notice to Stacy's parents. This conclusion is reached based on the following considerations:

a. The advisory was provided to Stacy's parents along with numerous other documents.

b. The advisory did not explicitly state that if parents wished reimbursement of insurance co-payments, they had to request such reimbursement in advance.

c. Stacy's parents told Anderson at their very first meeting that Stacy was already receiving physical therapy, and that such therapy was being funded by Stacy's parents' private health insurance. Despite knowing this, Anderson never affirmatively advised Stacy's parents that they could seek reimbursement for any co-payments they might be making. Stacy's parents could reasonably have concluded, based on Anderson's silence in this regard, that in fact they were not entitled to such reimbursement.

18. Additionally, it is the responsibility of the regional center, and the center's care coordinator, to ensure that a child receives the services she needs, and that the child's parents are advised of the existence and availability of appropriate services. Yet, for unknown reasons, Anderson failed to advise Stacy's parents either that they could secure reimbursement of their co-payments or that since Casa Colina was an IRC vendor, IRC could arrange for Stacy's physical and occupational therapy without recourse to the family's private health insurance. Under such circumstances, to deny the reimbursement of co-payments to which Stacy's parents are legally entitled would be wholly antithetical to the intent, purpose, and policies underlying the Early Intervention Services Act.

19. Finally, fiscal and budgetary considerations do not constitute a basis for denial of reimbursement. With regard to payments relating to closed fiscal years (i.e., January 2003 through June 2004), and as found above, alternative means of funding those reimbursements exist.

20. By reason of Factual Findings 1 through 14 and Legal Conclusions 1 through 18, it is concluded that the Service Agency Inland Regional Center is required to reimburse Stacy's family for the co-payments made to their private health insurer in connection with

Stacy's occupational and physical therapy for the period from January 2003 to February 2005. At the outset of the hearing, the parties agreed that the amount in question was $3,132.53. At the end of the hearing, both parties expressed the desire to review the documentation pertaining to the amount, to verify that the stated amount is correct, and, if not, to try to work out an agreement as to the correct amount. Accordingly, there is hereby issued the following:

ORDER

1. Claimant's appeal regarding the Service Agency's obligation to reimburse her parents for insurance co-payments they made in connection with the claimant's physical and occupational therapy for the period from January 2003 to February 2005 is granted.

2. The parties shall meet in an attempt to reach agreement as to the precise amount in question. If agreement cannot be reached within 30 days after the date of this Decision, the amount to be reimbursed shall be $3,132.53.

NOTICE

This is the final administrative decision in this matter. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.

DATED: _____

_____
DONALD P. COLE
Administrative Law Judge
Office of Administrative Hearings